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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 06-40151-JAR
)	
F. JEFFREY MILLER,)	
STEPHEN W. VANATTA,)	
HALLIE IRVIN, AND)	
SANDRA JO HARRIS,)	
)	
Defendants.)	
_____)	

MEMORANDUM AND ORDER

The Court now considers defendant Vanatta's Motion for Immediate Release From Pretrial Detention (Doc. 247). All other defendants have joined in the motion. For the reasons below and reasons detailed in the Court's Orders (Doc. 170 and 201), defendants' motion is denied.

Discussion

The Court incorporates by reference Docs. 96, 170, and 201. Since those orders have been published, and a few days before trial, the government moved to dismiss Count 7 of the Second Superseding Indictment charging defendants F. Jeffrey Miller, Stephen Vanatta, Hallie Irvin, and Sandra Joy Harris with harassment of persons in violation of 18 U.S.C. § 1512(d)(1). Vanatta, relying on his previous motions, maintains that there are conditions or combinations of conditions that will assure the safety of the community.¹ In his motion (Doc. 247), Vanatta

¹18 U.S.C. § 3142(e).

argues that because he is no longer “charged” with a crime of violence, there is no rebuttable presumption that he should be detained. He asserts that release on conditions would give him the ability to perform meaningfully in his defense and to discuss tactics with co-defendants. Co-defendants argue that release would enable all defendants to interact meaningfully without the eye of the Marshal Service.²

In the previous Orders, the Court found that there was clear and convincing evidence that Vanatta had harassed a witness in Case No. 06-40068. Just because the charges have been dismissed does not mean the evidence of his harassment of witnesses in another pending case has dissipated.³ Additionally, after weighing defendants’ concerns, the Court is not convinced that it should risk the safety of the community in order to make more convenient, Vanatta’s contacts with his co-defendants. Indeed, the Court has accommodated much of Vanatta’s request for opportunities to discuss tactics with co-defendants during this trial.

Nonetheless, Vanatta insists that there are conditions that can be imposed on him that will assure the safety of the community. The Court disagrees. Defendant was charged with a crime of violence for his alleged harassment of witnesses in a pending criminal case before this Court, a case that charges a separate conspiracy involving similar activities and transactions by co-defendants Jeffrey Miller and other defendants not charged in this case. Even if the Court

²To accommodate Vanatta and co-defendants, the Court has allowed, along with guidance from the Marshal Service, defendants to meet with each other throughout the trial. Defendants argue, however, that because the watchful eye of the Marshals must follow Vanatta, the Marshals are privy to attorney-client information; as a result, there is a “chilling” effect on their discussions.

³*See, e.g., United States v. Hightower*, 203 F.3d 836, No. 00-1002, 2000 WL 136813, at *2 (10th Cir. Feb. 7, 2000) (stating that just because the weight of evidence showing defendant’s danger to the community has abated does not mean that defendant’s dangerousness to the community has changed).

were to impose a condition of house arrest⁴ with electronic monitoring, the Court is not convinced that this would alleviate the risk of safety to the community. Even from home, the defendant could harass witnesses by phone, or again engage in a number of activities that were prohibited under the terms of the bond initially set in Case No. 06-40068.⁵ Given this defendant's violation of bond conditions set in that case, and given the nature of his violation, including harassment of witnesses, electronic monitoring of the defendant's movements simply would not reasonably assure the safety of the community. Nor would any other condition or combination of conditions. Accordingly, defendants' motion for immediate release is denied.

IT IS THEREFORE ORDERED THAT Defendants' Motion for Immediate Release From Pretrial Detention (Doc. 247) is denied.

IT IS SO ORDERED.

Dated: November 24, 2008

S/ Julie A. Robinson
JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE

⁴With exceptions for court appearances and meetings with counsel.

⁵*Compare United States v. Emmons*, No. 08-30670, 2008 WL 4411444, at *3 (5th Cir. Sept. 29, 2008) (finding that the probation office could not prevent defendant from accessing another computer and endangering another child).